

Message Text

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ACTION STR-07

INFO OCT-01 EUR-12 IO-13 ISO-00 STRE-00 AGRE-00 CEA-01

CIAE-00 COME-00 DODE-00 EB-08 FRB-03 H-01 INR-10

INT-05 L-03 LAB-04 NSAE-00 NSC-05 PA-01 CTME-00

AID-05 SS-15 ITC-01 TRSE-00 ICA-11 SP-02 SOE-02

OMB-01 DOE-15 OIC-02 AF-10 ARA-10 EA-10 NEA-10

GSA-02 /170 W

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R 171638Z JUL 78

FM USMISSION GENEVA

TO SECSTATE WASHDC 2174

INFO AMEMBASSY OTTAWA

ALL EC CAPITALS

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PASS STR ELECTRONICALLY

E.O. 11652: N/A

TAGS: ETRD, GATT, CA, EEC

SUBJECT: GATT COUNCIL - CANADA/EC DISPUTE ON ZINC

REF: GENEVA 8657

1. AS REPORTED REFTEL EC WILL ASK GATT COUNCIL ON JULY 24 TO MAKE INTERPRETATION OF THE GATT PANEL REPORT ON THE WITHDRAWAL OF TARIFF CONCESSIONS BY CANADA UNDER ARTICLE XXVIII:3. THE PANEL REPORT HAS BEEN ADOPTED BY THE COUNCIL BUT CANADA AND THE EC DIFFER ON WHAT ACTION SHOULD NOW BE TAKEN. EC (LUYTEN) HAS ARGUED THAT PANEL REPORT LEAVES THREE OPTIONS:

(A) THAT EC REDUCE THE TARIFF ON ZINC AND CANADA REESTABLISH THE BINDINGS IT WITHDREW,

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(B) THAT THE EC OFFER COMPENSATORY CONCESSIONS AND CANADA REESTABLISH THE BINDINGS IT WITHDREW, OR

(C) THE EC DOES NOTHING AND CANADA MUST REESTABLISH SOME OF THE BINDINGS IT WITHDREW BECAUSE THE PANEL HAD FOUND THAT THE CANADIAN WITHDRAWALS WERE EXCESSIVE.

CANADA CLAIMS THE PANEL REPORT, PARTICULARLY THE LAST SENTENCE OF THE CONCLUSIONS, LEAVES ONLY THE FIRST TWO OPTIONS. THE CANADIANS SAY THEY ARE WILLING TO NEGOTIATE WITH THE COMMUNITY CONCERNING COMPENSATORY CONCESSIONS BUT THAT THE COMMUNITY HAS THUS FAR MADE ONLY RIDICULOUS OFFERS.

2. AT THE LAST COUNCIL WE WERE ABLE TO AVOID TAKING SIDES BY REQUESTING THAT THE TWO PARTIES MEET AGAIN AND ATTEMPT TO BREAK THE IMPASSE. THE GATT SECRETARIAT (PATTERSON) HAS DISCUSSED THE MATTER INFORMALLY WITH THE TWO PARTIES, BUT BOTH REMAIN FIRM IN THEIR POSITIONS. HE INTENDS TO ATTEMPT ONCE MORE BEFORE THE COUNCIL MEETING TO ARRIVE AT A COMPROMISE SOLUTION BUT BOTH DELS, PARTICULARLY LUYTEN, APPEAR TO BE ATTACHED EMOTIONALLY TO THEIR POSITIONS AND COMPROMISE MAY NOT BE POSSIBLE. PATTERSON POINTS OUT THAT THE MATTER HAS IMPLICATIONS FOR THE DISPUTE SETTLEMENT NEGOTIATIONS IN THE MTN. THE EC, PARTLY BECAUSE OF THE EC EXPERIENCE IN THIS CASE AND IN THE DISC DISPUTE, HAS ATTEMPTED IN THE MTN TO OBTAIN DISPUTE SETTLEMENT PROCEDURES WHICH SHOULD ALLOW FOR FURTHER ARGUMENTATION BEFORE A PANEL, AFTER THE PANEL HAS REACHED A DECISION. PATTERSON BELIEVES, AND WE AGREE, THAT WE SHOULD SAY NOTHING IN THE COUNCIL THAT ALLOWS LUYTEN AN OPENING TO SUPPORT THE EC EFFORTS ON THIS MATTER IN THE MTN. WE SHOULD NOT REPEAT NOT SUPPORT ANY SUGGESTIONS THAT THE LIMITED OFFICIAL USE

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ORIGINAL PANEL BE ASKED TO CLARIFY ITS REPORT SINCE TO DO SO COULD IMPLICITLY SUPPORT EC ON QUESTION OF A REBUTTAL PROCESS (TO PANEL REPORTS) IN THE DISPUTE SETTLEMENT MECHANISM.

3. WE BELIEVE THAT IT WOULD BE UNWISE FOR THE U.S. TO BECOME INVOLVED ON ONE SIDE OR THE OTHER IN THIS DISPUTE, AND WE SHOULD SEEK A SOLUTION THAT AVOIDS SUCH A POSSIBILITY. WE SEE THE OPTIONS FOR THE U.S. AS FOLLOWS:

A. REMAIN SILENT IN THE HOPES THAT IF THE U.S. DOES NOT TAKE THE LEAD IN THIS DISPUTE BETWEEN TWO OF ITS MAJOR TRADING PARTNERS THAT OTHER DELEGATES WILL ALSO REMAIN QUIET AND THE CHAIR CAN CARRY THE ISSUE OVER TO THE FALL INSTRUCTING BOTH PARTIES TO TRY ONCE AGAIN. WE EXPECT THAT LUYTEN WOULD NOT BE SATISFIED WITH THIS AND AT THIS POINT MIGHT ASK THE CHAIR FOR AN INTERPRETATION. MORE LIKELY, HE HAS ALREADY CONVINCED ONE OR MORE CPS TO SPEAK OUT IN HIS SUPPORT.

B. POINT OUT THAT THE PANEL INTENDED THAT THE TWO PARTNERS SEEK A COMPROMISE AT THE HIGHEST LEVEL OF TRADE

LIBERALIZATION AND THEREFORE ASK THE TWO PARTIES TO EXAMINE ONCE AGAIN THE QUESTION OF COMPENSATION. WE THINK THAT FURTHER DELAY WOULD NOT SATISFY LUYTEN. HE COULD NOTE THAT THE COUNCIL HAD ALREADY GIVEN THE PARTIES MORE TIME AND THAT IT WAS NOW TIME FOR THE COUNCIL TO FULFILL ITS ROLE.

C. SUGGEST THAT THE CHAIR (I.E. GATT SECRETARIAT) MAKE A RULING IN THE MATTER. AT THE LAST COUNCIL PATTERSON EXPECTED THAT LUYTEN WOULD ASK THE COUNCIL CHAIRMAN FOR A RULING AND HAD INDICATED TO BOTH LUYTEN AND TO CANDEL MARTIN THAT IF ASKED FOR AN INTERPRETATION THE CHAIRMAN WOULD AGREE WITH THE EC'S INTERPRETATION. WE WOULD PREFER THAT THE EC ASK FOR SUCH A RULING, BUT LIMITED OFFICIAL USE

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SHOULD BE PREPARED TO DO SO IF THE EC DOES NOT RATHER
THAN ATTEMPT TO HAVE THE COUNCIL INTERPRET THE PANEL'S

FINDINGS. SINCE WE AGREE WITH THE EC AND THE SECRETARIAT'S INTERPRETATION OF THE PANEL REPORT, ASKING THE CHAIR FOR AN OPINION COULD AVOID HAVING MEMBERS OF THE COUNCIL TAKE SIDES IN THE DISPUTE, A PROCEDURE LIKELY TO RAISE TEMPERATURES WITHOUT RESOLVING THE ISSUE. INTERPRETATIONS FROM THE CHAIR HAVE BEEN INFREQUENT IN RECENT YEARS BUT WERE NOT UNUSUAL DURING THE EARLY YEARS OF THE GATT, AND IT MIGHT BE A USEFUL PROCEDURE TO REINTRODUCE FOR USE IN SUCH IMPASSES IN THE POST MTN PERIOD.

WE THEREFORE RECOMMEND THAT USDEL FOLLOW OPTIONS A, B AND C IN THAT ORDER; THAT IS, KEEP QUIET IF OTHERS DO; IF NOT, DIRECT THE DISPUTANTS TO TRY AGAIN TO REACH AN ACCOMMODATION; AND, IF THIS FAILS, TO ASK THE CHAIR FOR A RULING. VANDEN HEUVEL
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